

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WP(C).No. 18616 of 2015 (B)

PETITIONER(S) :

**THE KERALA SCHEDULE CASTE/SCHEDULE TRIBE AIKYAVEDI,
REPRESENTED BY ITS STATE ORGANISING SECRETARY,
GOVINDAN, S/O.KRISHNAN, VELIMANNA P.O.,
MASSERY, KOZHIKODE.**

**BY ADVS.SRI.V.V.SURENDRAN
SRI.P.A.HARISH**

RESPONDENT(S) :

- 1. THE DISTRICT COLLECTOR,
KOZHIKODE - 20.**
- 2. THE REVENUE DIVISIONAL OFFICER,
KOZHIKODE - 20.**
- 3. THE TAHSILDAR,
KOZHIKODE - 20.**
- 4. KODUVALLY GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY, KODUVALLY P.O.,
KOZHIKODE - 673 572.**
- 5. THE PARENT TEACHER ASSOCIATION,
G.M.L.P. SCHOOL, VAVAD, POST VAVAD,
KODUVALLY - 673 572.**

R1 TO R3 BY GOVERNMENT PLEADER SRI.GIKKU JACOB

R4 BY ADVS. SRI.K.M.FIROZ

SMT.M.SHAJNA

SRI.S.KANNAN

R5 BY ADVS. SRI.P.SANKARANKUTTY NAIR

SRI.K.SANDESH RAJA

SRI.VENU MENON

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS :

**EXHIBIT P1: TRUE COPY OF THE JUDGMENT IN O.S.NO.62/1952 ON
THE SUBORDINATE JUDGES COURT OF NORTH MALABAR.**

EXHIBIT P2: TRUE COPY OF THE GIFT DEED.

EXHIBIT P3: TRUE COPY OF THE SITE PLAN PREPARED BY TALUK SURVEYOR.

EXHIBIT P3(A):TRUE COPY OF THE REPORT PREPARED BY TALUK SURVEYOR.

**EXHIBIT P4: TRUE COPY OF THE PETITION FILED BY THE STATE SECRETARY
OF THE PETITIONER SAMITHI.**

**EXHIBIT P5: TRUE COPY OF THE COMPLAINT OF THE PETITIONER BEFORE
THE 1ST RESPONDENT.**

**EXHIBIT P6: TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
W.P.(C).NO.3223/13 DATED 06.06.2013.**

EXHIBIT P7: TRUE COPY OF THE ORDER OF THE DISTRICT COLLECTOR.

**EXHIBIT P8: TRUE COPY OF THE REPRESENTATION GIVEN BY
THE PETITIONER TO THE 1ST RESPONDENT DATED 08.07.2015.**

EXHIBIT P9: TRUE COPY OF THE PHOTOGRAPHS.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

W.P(C)No. 18616 of 2015

Dated this the 29th day of September, 2015

J U D G M E N T

Petitioner, aggrieved by Ext.P7 order of the District Collector, Kozhikode, has approached this Court.

2. The petitioner is a registered Society of the Scheduled Castes and Scheduled Tribe Community in Kerala.

3. The G.M.L.P.School, Vavad was functioning in an old building. It is in a dilapidated condition. One Abdul Vahab executed a gift deed in favour of Panchayath gifting a portion of his property for establishing a school. Accordingly, it was decided to relocate the GMLP School in the land gifted by Abdul Vahab.

4. The petitioner challenges the proposed construction in the land covered by Ext.P2 stating that this is encroaching upon burial ground of the Valluva community, a scheduled caste. It is also stated that the distance of proposed construction from burial ground is less

than 50 metres.

5. Petitioner approached this Court in WP(C).3223 of 2013 as against proposed construction of the school building adjacent to the burial ground. This Court directed the District Collector to consider the complaint of the petitioner. It is pursuant to the direction of this Court, the District Collector passed the impugned order produced as Ext.P7. In the impugned order, the District Collector found that there is nothing to indicate that the burial committee has landed property having an extent of 3.5 acres. It is also reported that the report of the Taluk Land Surveyor indicates only 25.85 cents of land alone in possession of the committee as a burial ground. It is also noted that the Committee also offered full support for the construction of the school. In view of the fact that the petitioner failed to establish that they are in possession of more than 3.5 acres of land, the District Collector declined to interfere with the construction.

6. The decision of the District Collector is under challenge

in this writ petition.

7. Essentially, this writ petition is filed to protect the burial ground belonging to the valluva community. Though the petitioner has taken a plea of distance rule based on the relevant provisions under Chapter IV of Rule 4 of KER, this is a larger issue having public interest, which the petitioner claims violation of law, rather than to protect their own property.

8. The petitioner relies on the judgment of the civil court Ext.P1 as well as the earlier decree of the civil court which is placed before this Court. Petitioner submits that this would clearly give an indication regarding the identification of the property claimed by the petitioner.

9. It is apparent that the District Collector did not sustain the petitioner's claim for want of necessary documents. This Court is

of the view that the petitioner should be given one more opportunity to substantiate his claim of possession over 3.5 acres of land. Therefore, the impugned order is set aside to the limited extent enabling the petitioner to produce documents and to adduce evidence before the District Collector to show that they are in possession of 3.5 acres of land being used as cemetery. The objections of the P.T.A. also shall be taken into account before taking a final decision in the matter. The fifth respondent submits that they have already preferred an appeal before the District Collector against the issuance of Ext.P3 location sketch issued by the Taluk Surveyor to the petitioner. That appeal also shall be taken along with the proceedings after giving notice to the petitioner. Needful shall be done within a period of two months. Till a decision is taken by the District Collector as above, the interim order will continue. The question relating to the violation of the distance rule is left open. All issues in this writ petition are left open including the claim of possessory right or right of the petitioner

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in respect of 25.85 cents of land.

This writ petition is disposed of as above.

A.MUHAMED MUSTAQUE,
Judge

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